IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.687 of 2007

Date of decision 18.9.2007

Additional S.E. H.P.S.E.B.
and anr. Petitioners

Vs.

Kalu Ram and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners : Mr. Shrawan Dogra, Advocate.

For the Respondents : Nemo

Rajiv Sharma, J.

A challenge has been laid by the employer i.e. Himachal Pradesh State Electricity Board to the Award passed by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala dated 22.9.2006 in reference No.107/2004 (RBT No.37/04).

The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala :

"Whether the termination of services of Shri Kalu Ram son of Sh.Labha Ram, Ex. daily wages beldar by the Additional Superintending Engineer, HPSEB Electrical Division, Joginder Nagar, District Mandi, H.P. w.e.f. 21.7.2000 without compliance of Section 25-G and 25-H of the Industrial Disputes Act, 1947 and clause 14(2) of the Certified Standing Orders of the Board, whereas junior to him are retained by the Board is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to"?

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

In sequel to the reference, a notice was issued by the Labour Court to the respondent, hereinafter referred to as the workman for convenience sake. The workman had filed statement of claim before the Labour Court primarily contending therein that he was engaged with effect from 3.11.1998 and was retrenched on 20.7.2000 without following the mandatory provisions of law. He had also given the details of the workmen who were juniors to him but were retained by the employer at the time of his retrenchment. The employer had resisted the claim of the workman. The Labour Court on the basis of the evidence, oral and documentary, led by the parties had answered the reference in affirmative vide Award dated 22.9.2006.

Mr.Shrawan Dogra, learned counsel appearing for the petitioners had strenuously argued that the findings recorded by the Labour Court are contrary to law. He also contended that with effect from 22.8.1992 the standing orders framed by the Board under the Industrial Employment (Standing Orders)Act, 1946 have ceased to apply and the finding recorded by the Labour Court that there was violation of Clause 14(2) of the Standing Orders of the Board is against the law. The workman was proceeded ex parte by this court vide order dated 11.9.2007.

I have heard Mr.Dogra, learned counsel for the petitioners at length and perused the record.

The workman was engaged on 3.11.1998 and as per the man days chart placed on record he had not completed 240 days in a block of 12 calendar months preceding his retrenchment i.e. 21.7.2000. The Labour Court had misdirected itself by coming to the conclusion that the workman was entitled to issuance of 10 days notice as per clause 14(2) of the Standing Orders framed by the Board under the provisions of Industrial Employment (Standing Orders) Act, 1946. The Standing Orders have ceased to apply to the Board with effect from 22.8.1992 and thereafter the provisions of

Industrial Disputes Act, 1947 were applicable. The workman was required to complete 240 days preceding his retrenchment to get the benefit accruing under Section 25(F) of the Act. Admittedly the workman had not completed 240 days and thus was not entitled to any notice or retrenchment compensation. The finding recorded by the Labour Court that the termination of the workman was bad for non compliance of clause 14(2) of the Standing Orders is liable to be set aside. The workman in alternative had also prayed that persons junior to him were retained at the time of effecting of his retrenchment. The details of persons have been given in his claim petition. He had also filed affidavit dated 18.10.2005 before the Labour Court giving therein the names of seven workmen who according to him were juniors to him but retained at the time of his retrenchment.

The workman had appeared as PW-1 before the Labour Court and has denied in his cross-examination the suggestion made by the employer that no person junior to him was retained at the time of his retrenchment. Mr.B.R.Rana had appeared as RW-1 on behalf of the employer. He has shown his ignorance whether the persons junior to the workman were retained at the time of his retrenchment or not. The Labour Court has not considered the plea of the workman with regard to violation of Section 25(G) of the Industrial Disputes Act, 1947. Once the plea has been raised by the workman that persons junior to him were retained while retrenching him, this plea was required to be gone into by the Labour Court. Accordingly the Award dated 22.9.2006 is quashed and set aside. The finding recorded by the Labour Court that there was violation of clause 14(2) of the Standing Orders framed by the Board is set aside. Since the plea raised by the workman that he was entitled to protection of Section 25(G) of the Act has not been considered at all by the Labour Court,

the matter is remanded to the Labour Court to go into this aspect of the matter.

In view of the observations made here in above, the writ petition is disposed of and the learned H.P. Industrial Tribunal-cum-Labour Court, Dharamshala is directed to hear the matter afresh as per the provisions of the Industrial Disputes Act, 1947 more particularly with regard to Section 25(G) of the Act within a period of three months from the receipt of the certified copy of the judgment. The parties are directed to appear before the Labour Court on 8.10.2007 and to lead their respective evidence in support of and against the violation of Section 25(G) of the Act.

September 18,2007(g) **(Rajiv Sharma), J.**

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